



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

201431038

MAY 09 2014

U.I.L. 9100.00-00, 408A.00-00

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T. EP. RA. T3

Legend:

Taxpayer A	=	***
Tax Advisor S	=	***
Tax Advisor M	=	***
Financial Institution F	=	***
Financial Institution T	=	***
Amount A	=	***
IRA B	=	***
Roth IRA X-1	=	***
Roth IRA X-2	=	***
Roth IRA X-3	=	***

Roth IRA X-4 = \*\*\*

Roth IRA X-5 = \*\*\*

Roth IRA Y-1 = \*\*\*

Roth IRA Y-2 = \*\*\*

Roth IRA Y-3 = \*\*\*

Roth IRA Y-4 = \*\*\*

Roth IRA Y-5 = \*\*\*

IRA Z = \*\*\*

Dear \*\*\*:

This is in response to your letter dated November 7, 2012, as supplemented by correspondence dated June 27, 2013, submitted on your behalf, by your authorized representative, in which you request relief under section 301.9100-3 of the Procedure and Administrative Regulations ("Regulations").

The following facts and representations have been submitted under penalties of perjury in support of the ruling requested.

In 2010, Taxpayer A maintained an individual retirement account, IRA B, as described in section 408(a) of the Internal Revenue Code ("Code") with Financial Institution F. On December 31, 2010, Taxpayer A converted IRA B into Roth IRA X-1, Roth IRA X-2,

Roth IRA X-3, Roth IRA X-4, and Roth IRA X-5, Roth IRAs described in section 408A of the Code.

In August 2011, in a trustee to trustee transfer, Taxpayer A transferred Roth IRA X-1, Roth IRA X-2, Roth IRA X-3, Roth IRA X-4 and Roth IRA X-5 from Financial Institution F to Financial Institution T, into Roth IRA Y-1, Roth IRA Y-2, Roth IRA Y-3, Roth IRA Y-4, and Roth IRA Y-5, respectively.

Due to a decrease in account values, Taxpayer A decided to recharacterize his Roth IRAs into a traditional IRA. He notified Financial Institution T of his intent and Financial Institution T effected the transfer of Taxpayer A's Roth IRAs into a traditional IRA, IRA Z, on October 12 and October 13 of 2011.

Thereafter, Tax Advisor S, a certified public accountant ("CPA") prepared Taxpayer A's 2010 Federal income tax return. Taxpayer A believed that the return had been timely filed by Tax Advisor S. Tax Advisor S had prepared and filed Taxpayer A's Federal income tax returns for 29 years.

In January 2012, Taxpayer A hired Tax Advisor M, a CPA, to prepare his 2011 Federal income tax return. Tax Advisor M, upon Taxpayer A's request, determined that Taxpayer A's 2010 Federal income tax return was never filed. Tax Advisor S never informed Taxpayer A that the 2010 Federal income tax return was never filed.

Tax Advisor M also determined that the Internal Revenue Service ("Service") had issued tax refund checks for the Federal income tax returns Tax Advisor S had filed on behalf of Taxpayer A in 2008 and 2009 which had been fraudulently cashed by Tax Advisor S for his own personal gain.

The 2010 Federal income tax return was filed in May 2012 and reported the 2010 Roth IRA conversions as income. In June 2012, Taxpayer A filed a 2010 amended Federal income tax return, prepared by Tax Advisor M. The amended return reduced Taxpayer A's income by Amount A, the total amount of the Roth IRA recharacterization. The Service denied credit for Taxpayer A's Roth IRA recharacterization for the 2010 tax year because his 2010 Federal income tax return had not been timely filed and therefore, the Roth recharacterization was not timely made.

The statute of limitations on Taxpayer A's 2010 Federal income tax return remains open.

Based on the foregoing facts and representations, you have requested a ruling that, pursuant to section 301.9100-3 of the Regulations, Taxpayer A be granted a period not to exceed 60 days from the date of this letter ruling to recharacterize the 2010 contributions to Roth IRA Y-1, Roth IRA Y-2, Roth IRA Y-3, Roth IRA Y-4, and Roth IRA Y-5 as contributions to a traditional IRA.

With respect to your ruling request, section 408A(d)(6) of the Code and section 1.408A-

5 of the Federal Income Tax Regulations ("I.T. Regulations") provide that, except as otherwise provided by the Secretary, a taxpayer may elect to recharacterize an IRA contribution made to one type of IRA as having originally been made to another type of IRA by making a trustee-to-trustee transfer of the IRA contribution, plus earnings, to the other type of IRA. In a recharacterization, the IRA contribution is treated as having been made to the transferee IRA and not the transferor IRA. This recharacterization election generally must occur on or before the date prescribed by law, including extensions, for filing the taxpayer's Federal income tax return for the year of contribution.

Section 1.408A-5, Q&A-6 of the I.T. Regulations describes how a taxpayer makes the election to recharacterize the IRA contribution. To recharacterize an amount that has been converted from a traditional IRA to a Roth IRA: (1) the taxpayer must notify the Roth IRA trustee of the taxpayer's intent to recharacterize the amount, (2) the taxpayer must provide the trustee (and the transferee trustee, if different from the transferor trustee) with specified information that is sufficient to effect the recharacterization, and (3) the trustee must make the transfer before the due date (including extensions) of the tax return for the year the recharacterization contribution was made.

Sections 301.9100-1, 301.9100-2, and 301.9100-3 of the Regulations provide guidance concerning requests for relief submitted to the Service on or after December 31, 1997. Section 301.9100-1(c) provides that the Commissioner of Internal Revenue, in his discretion, may grant a reasonable extension of the time fixed by a regulation, a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin for the making of an election or application for relief in respect of tax under, among others, Subtitle A of the Code.

Section 301.9100-2 of the Regulations provides for an automatic extension of 6 months from the due date of a return, excluding extensions, to make elections that otherwise must be made by the due date of the return or the due date of the return plus extensions, provided (1) the taxpayer's return was timely filed for the year the election should have been made and (2) the taxpayer takes appropriate corrective action within this 6-month period.

Section 301.9100-3 of the Regulations generally provides guidance with respect to the granting of relief with respect to those elections not referenced in section 301.9100-2. The relief requested in this case is not referenced in section 301.9100-2.

Section 301.9100-3 of the Regulations provides that applications for relief that fall within section 301.9100-3 will be granted when the taxpayer provides sufficient evidence (including affidavits described in section 301.9100-3(e)(2)) to establish that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief would not prejudice the interests of the Government.

Section 301.9100-3(b)(1) of the Regulations provides that a taxpayer will be deemed to have acted reasonably and in good faith (i) if its request for section 301.9100-1 relief is filed before the failure to make a timely election is discovered by the Service; (ii) if the

taxpayer inadvertently failed to make the election because of intervening events beyond the taxpayer's control; (iii) if the taxpayer failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election; (iv) the taxpayer reasonably relied upon the written advice of the Service; or (v) the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(c)(1)(ii) of the Regulations provides that ordinarily the interests of the Government will be treated as prejudiced and that ordinarily the Service will not grant relief when tax years that would have been affected by the election had it been timely made, are closed by the statute of limitations before the taxpayer's receipt of a ruling granting relief under this section.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that after exercising reasonable diligence and after attempting to recharacterize the Roth IRAs in October 2011, his failure to recharacterize Roth IRA Y-1, Roth IRA Y-2, Roth IRA Y-3, Roth IRA Y-4, and Roth IRA Y-5 on or before the date prescribed by law, including extensions, for filing his Federal income tax return for the year of contribution, was caused by intervening events beyond his control, namely the failure of Tax Advisor S to file his 2010 tax return.

Based on the above, Taxpayer A meets the requirements of section 301.9100-3(b)(1) of the Regulations, clauses (i) and (ii), for the 2010 tax year. Accordingly, Taxpayer A is granted an extension of 60 days as measured from the date of the issuance of this ruling letter to recharacterize Roth IRA Y-1, Roth IRA Y-2, Roth IRA Y-3, Roth IRA Y-4 and Roth IRA Y-5 to traditional IRA Z.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

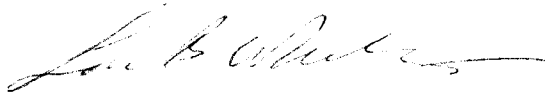
The letter assumes that the above IRAs qualify under either section 408 of the Code or section 408A of the Code at all relevant times.

This ruling is directed only to the taxpayer who requested it. Section 6110(K)(3) of the Code provides that it may not be used or cited by others as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact \*\*\* (ID# \*\*\*, at (\*\*\*) \*\*\*.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Laura B. Warshawsky", written in dark ink.

Laura B. Warshawsky, Manager  
Employee Plans Technical Group 3

Enclosures:  
Deleted copy of letter ruling  
Notice of Intention to Disclose

cc: \*\*\*